

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2011-271
HOUSE BILL 427

AN ACT TO PROVIDE FOR THE SEIZURE, FORFEITURE, AND SALE OF MOTOR VEHICLES USED BY DEFENDANTS IN FELONY CASES INVOLVING SPEEDING TO ELUDE ARREST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.5 reads as rewritten:

"§ 20-141.5. Speeding to elude arrest.

...

(f) Each law enforcement agency shall adopt a policy applicable to the pursuit of fleeing or eluding motorists. Each policy adopted pursuant to this subsection shall specifically include factors to be considered by an officer in determining when ~~it is advisable to break off a chase to stop and apprehend a suspect.~~ to initiate or terminate a pursuit. The Attorney General shall develop a model policy or policies to be considered for use by law enforcement agencies.

(g) If a person is arrested for a felony violation under this section, then the law enforcement agency shall seize the motor vehicle and deliver the same to the sheriff of the county in which such offense is committed, or the same shall be placed under said sheriff's constructive possession if delivery of actual possession is impractical, and the vehicle shall be held by the sheriff pending the trial of the person or persons operating such motor vehicle and charged with a felony offense under this section.

(1) The sheriff shall restore the seized motor vehicle to the owner upon execution by the owner of a good and valid bond, with sufficient sureties, in an amount double the value of the property, which bond shall be approved by said sheriff and shall be conditioned on the return of the motor vehicle to the custody of the sheriff on the day of trial of the person or persons accused. Upon an acquittal or dismissal of any felony charge under this section, the sheriff shall return the motor vehicle to the owner thereof.

(2) Notwithstanding the provisions for sale set out in subsection (h) of this section, on petition by a lienholder, the court, in its discretion and upon such terms and conditions as it may prescribe, may allow reclamation of the vehicle by the lienholder. The lienholder shall file with the court an accounting of the proceeds of any subsequent sale of the vehicle and pay into the court any proceeds received in excess of the amount of the lien.

(h) Upon conviction of the operator of said motor vehicle of a felony offense under this section, the court shall order a sale at public auction of said motor vehicle.

(1) The officer making the sale shall make the following deductions from the sale proceeds:

a. The expenses of keeping the motor vehicle.

b. The fee for the seizure.

c. The costs of the sale.

The officer shall then pay, from the net proceeds, all liens, according to their priorities, which are established by intervention or otherwise at the hearing



or in other proceeding brought for said purpose as being bona fide. The officer shall pay the balance of the proceeds to the proper officer of the county who receives fines and forfeitures to be used for the school fund of the county.

(2) All liens against a motor vehicle sold under the provisions of this section shall be transferred from the motor vehicle to the proceeds of its sale.

(3) If, at the time of hearing, or other proceeding in which the matter is considered, the owner of the vehicle can establish to the satisfaction of the court that the provisions of sub-subdivisions a. through c. of this subdivision apply, then the court shall not order a sale of the vehicle but shall restore it to the owner. The owner shall be entitled to a trial by jury upon the issues in this subdivision.

a. The defendant was an immediate member of the owner's family at the time of the offense.

b. The defendant had no previous felony or misdemeanor convictions at the time of the offense and had no previous or pending violations of any provision in Chapter 20 of the General Statutes for the three years previous to the time of the offense.

c. The defendant was under the age of 19 at the time of the offense.

(4) A nondefendant motor vehicle owner may file a petition with the clerk of court seeking a pretrial determination that the petitioner is an innocent owner. The clerk shall consider the petition and make a determination as soon as may be feasible. At any proceeding conducted pursuant to this subdivision, the clerk is not required to determine the issue of forfeiture, only the issue of whether the petitioner is an innocent owner. If the clerk determines that the petitioner is an innocent owner, the clerk shall release the motor vehicle to the petitioner. The clerk shall send a copy of the order authorizing or denying release of the vehicle to the district attorney and the sheriff. An order issued under this subdivision finding that the petitioner failed to establish that the petitioner is an innocent owner may be reconsidered by the court as part of the forfeiture hearing under this section.

(i) If the owner of a motor vehicle seized pursuant to this section cannot be found, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken, or, if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if said owner shall not appear within 10 days after the last publication of the advertisement, the property shall be sold, or otherwise disposed of in the manner set forth in this section.

(j) When any vehicle confiscated under the provisions of this section is found to be specially equipped or modified from its original manufactured condition so as to increase its speed, the court shall, prior to sale, order that the special equipment or modification be removed and destroyed and the vehicle restored to its original manufactured condition. However, if the court should find that such equipment and modifications are so extensive that it would be impractical to restore said vehicle to its original manufactured condition, then the court may order that the vehicle be turned over to such governmental agency or public official within the territorial jurisdiction of the court as the court shall see fit, to be used in the performance of official duties only, and not for resale, transfer, or disposition other than as junk: Provided, that nothing herein contained shall affect the rights of lienholders and other claimants to said vehicles as set out in this section."

SECTION 2. This act becomes effective December 1, 2011, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 5:06 p.m. this 23rd day of June, 2011